

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	File No. EB-07-IH-4916
	)	
Ultimate Medium Communications Corporation	)	NAL/Acct. No. 200732080036
	)	
Apparent Liability for Forfeiture	)	FRN No. 0011607538

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER**

**Adopted: September 20, 2007****Released: September 24, 2007**

By the Chief, Investigations and Hearings Division:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture and Order* (“NAL”), we find that Ultimate Medium Communications Corporation (“UMCC”) apparently violated Commission orders by willfully and repeatedly failing to respond to directives of the Enforcement Bureau (“Bureau”) to provide certain information and documents. Based on our review of the facts and circumstances of this case, and for the reasons discussed below, we find that UMCC is apparently liable for a monetary forfeiture in the amount of \$20,000.

**II. BACKGROUND**

2. UMCC is an Indiana-based company that provides local and long distance voice and data services.<sup>1</sup> UMCC filed a Telecommunications Reporting Worksheet (“Worksheet”) on December 1, 2005, but has not filed any subsequent Worksheet since that time. On June 14, 2007, the Bureau issued a letter of inquiry (“LOI”)<sup>2</sup> to UMCC to obtain information concerning UMCC’s compliance with, among other things, various regulatory program filing and contribution requirements.<sup>3</sup> The LOI directed UMCC

<sup>1</sup> See [http://www.ultimatemedium.com/current\\_customers/announcements.asp](http://www.ultimatemedium.com/current_customers/announcements.asp) (accessed August 23, 2007); [http://www.ultimatemedium.com/prospective\\_customers/technology.asp](http://www.ultimatemedium.com/prospective_customers/technology.asp) (accessed August 23, 2007); [http://www.ultimatemedium.com/prospective\\_customers/products\\_and\\_services.asp](http://www.ultimatemedium.com/prospective_customers/products_and_services.asp) (accessed August 23, 2007).

<sup>2</sup> Letter from Trent B. Harkrader, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to Scott Wilson, Chief Executive Officer, Ultimate Medium Communications Corporation, dated June 14, 2007 (the “LOI”). Bureau staff sent the LOI to UMCC’s address in Camel, IN by certified mail, return receipt requested and facsimile. Receipt of the letter is shown by confirmation of the facsimile transmission to the facsimile number and the signed certified mail return receipt card.

<sup>3</sup> Telecommunications carriers must submit first a Form 499-A registration, and upon issuance of a filer identification number by USAC, must submit thereafter annual Telecommunications Reporting Worksheets for the purpose of assessing various regulatory fee program payments. See 47 C.F.R. §§ 1.1157, 52.17, 52.32, 54.706, 54.711, 64.604 and 64.1195. In addition, telecommunications carriers, with certain exceptions, must file quarterly Worksheets to determine monthly universal service contributions. See 47 C.F.R. §§ 54.706, 54.711, 54.713; FCC Form 499-Q (2007) (quarterly Worksheets). USAC is the data collection agent for FCC Form 499s. See FCC Form 499-A (2007) at 8; FCC Form 499-Q (2007).

to respond to the Bureau's inquiries by July 5, 2007. Despite receiving the LOI, UMCC failed to provide the LOI response by the due date.<sup>4</sup>

3. The Bureau sent a follow-up letter on July 19, 2007 ("Follow-Up Letter") directing UMCC to provide complete responses to inquiries in the LOI by July 26, 2007.<sup>5</sup> The Follow-Up Letter also warned UMCC that its failure to respond fully to the Bureau's LOI could subject the company to potential enforcement action. Upon receiving the facsimile transmission on July 19, 2007, UMCC's Chief Executive Officer ("CEO") told Bureau staff that part of the letter was jumbled and claimed that UMCC did not receive the LOI. Per UMCC's request, Bureau staff subsequently sent that day via the e-mail address provided by the company's CEO the Follow-Up Letter and a courtesy copy of the LOI.<sup>6</sup> UMCC again failed to respond to the LOI. Bureau staff made a final attempt on July 30, 2007 to contact UMCC to determine if or when the company would respond to the LOI. UMCC's CEO claimed that he did not receive the July 19, 2007 E-Mail and that he would contact Bureau staff after checking with his employees. To date, the Bureau has not received a response to the LOI.

4. Under section 503(b)(1) of the Communications Act of 1934, as amended (the "Act"), any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>7</sup> Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.<sup>8</sup> The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act<sup>9</sup> and the Commission has so interpreted the term in the section 503(b) context.<sup>10</sup> The Commission also may assess a forfeiture for violations that are merely repeated, and not willful.<sup>11</sup> "Repeated" means that the act was committed or omitted more than once, or lasts more than one day.<sup>12</sup> To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom the notice has been issued must have an opportunity to show, in writing,

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<sup>4</sup> Receipt of the letter is shown by confirmation of the facsimile transmission to the facsimile number and the signed certified mail return receipt card.

<sup>5</sup> Letter from Trent B. Harkrader, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to Scott Wilson, Ultimate Medium Communications Corporation, dated July 19, 2007 ("Follow-Up Letter"). The letter was initially sent by certified mail/return receipt and by facsimile. Receipt of the letter is shown by confirmation of the facsimile transmission to the facsimile number. There was no return receipt for the certified mail.

<sup>6</sup> E-Mail from Diana Lee, Attorney Advisor, Investigations and Hearings Division, to Scott Wilson, Chief Executive Officer, Ultimate Medium Communications Corporation (July 19, 2007) ("July 19, 2007 E-Mail"). UMCC confirmed the e-mail address as valid prior to e-mail delivery. In addition, UMCC listed the e-mail address as contact information on UMCC's 2005 FCC Form 499-A.

<sup>7</sup> 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1); *see also* 47 U.S.C. § 503(b)(1)(D) (forfeitures for violation of 14 U.S.C. § 1464).

<sup>8</sup> 47 U.S.C. § 312(f)(1).

<sup>9</sup> H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>10</sup> *See, e.g., Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) ("*Southern California Broadcasting Co.*").

<sup>11</sup> *See, e.g., Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, ¶ 10 (2001) ("*Callais Cablevision*") (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator's repeated signal leakage).

<sup>12</sup> *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision*, 16 FCC Rcd at 1362, ¶ 9.

why no such forfeiture penalty should be imposed.<sup>13</sup> The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has willfully or repeatedly violated the Act or a Commission order or rule.<sup>14</sup>

### III. DISCUSSION

#### A. Apparent Violation

5. We find that UMCC apparently violated Commission orders by willingly and repeatedly failing to respond to Bureau inquiries. Section 218 of the Act specifically authorizes the Commission to “obtain from . . . carriers . . . full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created.”<sup>15</sup> Sections 4(i), 4(j), and 403 of the Act unequivocally grant the Commission the power to direct responses to inquiries in order to execute its functions.<sup>16</sup> As indicated above, the Bureau directed UMCC to provide certain documents and information to enable the Commission to perform its enforcement function and evaluate allegations that UMCC may have violated Commission rules. There is no question that UMCC received both the June 14, 2007 LOI and the Follow-Up Letter.<sup>17</sup> Further, Bureau staff took the additional step of contacting UMCC by telephone to determine if or when UMCC would be responding to the LOI. Despite the Bureau’s efforts to elicit information from UMCC, as of the date of this *NAL*, UMCC has failed to provide its response to the Bureau’s LOI. We therefore conclude that UMCC’s continuing failure to respond to the Bureau’s LOI constitutes an apparent willful or repeated violation of Commission orders.<sup>18</sup>

#### B. Proposed Forfeiture Amount

6. Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$130,000 for each violation or each day of a continuing violation, up to a statutory maximum of \$1,325,000 for a single act or failure to act.<sup>19</sup> In determining the appropriate forfeiture amount, we consider the factors enumerated in section 503(b)(2)(D) of the Act, including “the nature, circumstances,

<sup>13</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

<sup>14</sup> See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002) (“*SBC Forfeiture Order*”).

<sup>15</sup> 47 U.S.C. § 218.

<sup>16</sup> 47 U.S.C. §§ 154(i),(j), & 403.

<sup>17</sup> See *supra* at nn. 6-8.

<sup>18</sup> See, e.g., *SBC Forfeiture Order*, 17 FCC Rcd 7589, 7599-7600, ¶¶ 23-28 (ordering \$100,000 forfeiture for egregious and intentional failure to certify the response to a Bureau inquiry); *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19898 n. 36 (2003) (noting delayed response to an LOI is considered dilatory behavior which may result in future sanctions); *BigZoo.Com Corporation*, Notice of Apparent Liability for Forfeiture and Order, 19 FCC Rcd 24437 (Enf. Bur. 2004), Order of Forfeiture, 20 FCC Rcd 3954 (Enf. Bur. 2005) (“*BigZoo*”) (ordering \$20,000 forfeiture for failure to respond to an LOI); *American Family Association, Licensee of Station KBMP(FM), Enterprise, Kansas*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 14072, Forfeiture Order, 19 FCC Rcd 22025 (Enf. Bur. 2004) (ordering \$3,000 forfeiture against non-commercial educational station for a partial response to an LOI); *World Communications Satellite Systems, Inc.*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 18545 (Enf. Bur. 2003) (proposing \$10,000 forfeiture for non-responsive reply to an LOI); *Donald W. Kaminski, Jr.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 10707 (Enf. Bur. 2001), Forfeiture Order, 18 FCC Rcd 26065 (Enf. Bur. 2003) (ordering \$4,000 forfeiture for individual’s failure to respond to an LOI).

<sup>19</sup> 47 U.S.C. § 503(b)(2)(B); see also 47 C.F.R. § 1.80(b)(2); *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 19 FCC Rcd 10945 (2004).

extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>20</sup>

7. We propose a forfeiture in the amount of \$20,000 for UMCC’s willful or repeated failure to respond to the LOI. Section 1.80 of the Commission’s rules and the Commission’s *Forfeiture Policy Statement* establish a base forfeiture amount of \$3,000 for failure to file required forms or information, and \$4,000 for failure to respond to a Commission communication.<sup>21</sup> We find that UMCC’s total failure to respond to the LOI, notwithstanding the Bureau’s multiple attempts to obtain the company’s response, warrants a substantial increase to this base amount. Misconduct of this type exhibits a disregard for the Commission’s authority and, more importantly, threatens to compromise the Commission’s ability to adequately investigate violations of its rules. In this case, such misconduct inhibits our ability adequately to detect and deter potential rule violations in areas of critical importance to the Commission -- contributions to the federal regulatory programs. Prompt and full responses to Bureau inquiry letters are critical to the Commission’s enforcement function. We therefore propose a total forfeiture against UMCC of \$20,000 for failing to respond to Commission communications. This forfeiture amount is consistent with recent precedent in similar cases, where companies failed to provide responses to Bureau inquiries concerning compliance with the Commission’s rules despite evidence that the letters of inquiry had been received.<sup>22</sup>

8. We also direct UMCC to respond fully to the June 14, 2007 LOI within thirty (30) days of the release of this order. Failure to do so may constitute an additional violation potentially subjecting UMCC to further penalties, including potentially higher monetary forfeitures, the revocation of operating authority, and the disqualification of any UMCC principal from the provision of any common carrier services without the prior consent of the Commission.<sup>23</sup>

#### IV. ORDERING CLAUSES

9. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and section 1.80 of the Commission’s rules, 47 C.F.R. § 1.80, Ultimate Medium Communications Corporation is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of \$20,000 for willfully and repeatedly violating Commission orders.

10. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission’s rules, 47 C.F.R. § 1.80, within thirty (30) days of the release date of this NOTICE OF APPARENT LIABILITY FOR FORFEITURE, Ultimate Medium Communications Corporation SHALL PAY the full amount of the proposed forfeiture currently outstanding on that date or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

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<sup>20</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>21</sup> 47 C.F.R. § 1.80; *Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17114 (1997) (“*Forfeiture Policy Statement*”), *recon. denied* 15 FCC Rcd 303 (1999).

<sup>22</sup> See, e.g., *Universal Telecommunications, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 21 Rcd 6579 (Enf. Bur. 2006) (ordering \$20,000 forfeiture for failure to respond to an LOI); *BigZoo*, 20 FCC Rcd at 3955 (same); *QuickLink Telecom, Inc.*, Order of Forfeiture, 20 FCC Rcd 14464 (Enf. Bur. 2005) (same).

<sup>23</sup> See *CCN, Inc., et. al*, *Order to Show Cause and Opportunity for Hearing*, Order, 13 FCC Rcd 13599 (1998) (revoking carrier’s operating authority based on findings of repeated violations); see also, e.g., *Business Options, Inc.*, Consent Decree, 19 FCC Rcd 2916 (2003); *NOS Communications, Inc.*, *Affinity Network Incorporated and NOSVA Limited Partnership*, Consent Decree, 2003 WL 22439710 (2003).

11. Payment by check or money order, payable to the order of the “Federal Communications Commission,” may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251. Payment by overnight mail may be sent to Mellon Client Service Center, 500 Ross Street, Room 670, Pittsburgh, PA 15262-0001, Attn: FCC Module Supervisor. Payment by wire transfer may be made to: ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6229. The payment should note the NAL/Acct. No. reference above.

12. IT IS FURTHER ORDERED, that pursuant to sections 4(i), 4(j), 218 and 403 of the of the Communications Act of 1934, as amended, 47 U.S.C. §§ 4(i), 4(j), 218 and 403, and section 54.711 of the Commission’s rules, 47 C.F.R. § 54.711, Ultimate Medium Communications Corporation, shall fully respond to the June 14, 2007 and July 19, 2007 Letters of Inquiry sent by the FCC’s Enforcement Bureau within thirty (30) days of the release of this order.

13. The response, if any, to this NOTICE OF APPARENT LIABILITY FOR FORFEITURE must be mailed to Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Suite 4-C330, Washington, D.C. 20554 and must include the NAL/Acct. No. referenced above. In addition, a copy of the response, if any, should be sent to the following E-mail address: hillary.denigro@fcc.gov.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. Requests for payment of the full amount of this *Notice of Apparent Liability for Forfeiture* under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, SW, Washington, DC 20554.<sup>24</sup>

16. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent, by certified mail/return receipt requested to Scott Wilson, Ultimate Medium Communications Corporation, 484 East Carmel Drive, #290, Carmel, IN 46032.

FEDERAL COMMUNICATIONS COMMISSION

Hillary S. DeNigro  
Chief, Investigations and Hearings Division

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<sup>24</sup> See 47 C.F.R. § 1.1914.